

Larry W. Lee (State Bar No. 228175)
Max W. Gavron (State Bar No. 291697)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa St., Suite 1250
Los Angeles, CA 90071
Tel: (213) 488-6555
Fax: (213) 488-6554
lwlee@diversitylaw.com
mgavron@diversitylaw.com

Attorneys for Plaintiff and Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

BENJAMIN BROWN-BAXTER, as an
individual and on behalf of aggrieved
employees,

Plaintiff,

vs.

TUTOR PERINI CORPORATION, a
Massachusetts corporation; DESERT
MECHANICAL, INC., a Nevada
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 21STCV30039

(Assigned to the Honorable Colin P. Leis, Dept.
74)

**DECLARATION OF MAX W. GAVRON IN
SUPPORT OF PLAINTIFF'S MOTION TO
APPROVE THE PARTIES' SETTLEMENT
AGREEMENT PURSUANT TO THE LABOR
CODE PRIVATE ATTORNEYS GENERAL
ACT OF 2004**

Reservation No.: 326040727832

Date: August 23, 2023

Time: 8:30 A.M.

Dept.: 74

Action Filed: August 13, 2021

Trial Date: April 22, 2024

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I, Max W. Gavron, hereby declare and state as follows:

1. I am an attorney at law duly admitted to practice before all courts in the State of California and am a member of the law firm of the Diversity Law Group, P.C., one of the attorneys of record for Plaintiff Benjamin Baxter-Brown (“Plaintiff”) in the above-entitled action. I have personal knowledge of the matters set forth herein, and if called upon as a witness to testify thereto, I could and would competently do so.

PROCEDURAL HISTORY

2. On June 10, 2021, Plaintiff sent notice to the Labor and Workforce Development Agency (“LWDA”) giving notice of his intent to pursue a representative PAGA action, on behalf of himself and the State of California, as well as on behalf of other aggrieved employees (the “PAGA Notice”).

3. On August 13, 2021, Plaintiff filed a representative action complaint against Defendants Desert Mechanical, Inc. and Tutor Perini Corporation (together, “Defendants”) asserting a claim under Labor Code § 2698, *et seq.*, predicated on underlying violations of Labor Code §§ 212 and 225.5 (the “Action”).

4. Plaintiff subsequently amended the complaint on October 18, 2021, and again on December 6, 2021, adding further details regarding the exhaustion of administrative remedies, joint employer relationship between Defendants, and other information. The Second Amended Complaint is the operative Complaint (“Complaint”).

5. After the filing of the initial complaint, the Parties engaged in formal and informal discovery and engaged in several meet and confer efforts and an informal discovery conference. Plaintiff propounded multiples sets of written discovery requests upon Defendants, including requests for production of documents, requests for admissions, and interrogatories. Defendant also filed and Plaintiff opposed a Motion to Strike, a Demurrer, and Motion to Compel Arbitration. Plaintiff defeated all of these motions. Plaintiff thereafter filed four motions to compel.

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6. Thereafter, the Parties agreed to engage in mediation before neutral Christopher E. Panetta, Esq. In connection with the mediation, Defendants provided Plaintiff and his counsel with information about the number of potentially aggrieved employees, the number of pay periods at issue, sample checks, and other data to analyze Defendant's potential liability. Based on this information, the Parties conducted settlement negotiations.

7. Following a full day of mediation with Mr. Panetta on April 10, 2023, the Parties agreed to terms for complete settlement of the Action, which was negotiated at arm's-length with each Party having had the opportunity to consider all known facts and circumstances.

8. The proposed settlement follows the Los Angeles Superior Court's model settlement agreement.

9. The Parties have agreed to settle the Action pursuant to the terms and conditions of the PAGA Settlement Agreement (“Settlement Agreement”), a true and correct copy of which is attached to this declaration as **Exhibit A**.

POTENTIAL PENALTIES

10. Prior to mediation, Defendants provided the number of potentially aggrieved employees, the number of pay periods at issue, sample checks, and other data for analysis, which permitted Plaintiff to analyze Defendants' potential exposure and liability. As detailed in the Settlement Agreement, there are approximately 432 Aggrieved Employees and approximately 9,175 pay periods at issue during the time encompassed by this settlement. Agreement ¶ 4.1.

11. Labor Code section 225.5 provides the penalty structure for violations of Labor Code Section 212 where an employee's wages are unlawfully withheld, and provides \$100 for initial violations, and \$200 for subsequent ones, plus 25 percent of the amount unlawfully withheld. Lab. Code § 225.5; *Solis*, 612 F. Supp. 2d at 1087. The PAGA's default penalty structure also provides \$100 for the initial violation and \$200 for subsequent violations. Cal. Labor Code § 2699(f).

12. Defendants' potential exposure could be as high as \$1.8 million if the Court were to award a \$100 penalty for an initial violation and a \$200 penalty for each subsequent violation during each pay period encompassed by the proposed settlement $((9,175 \times \$200) - (432$

1 Aggrieved Employees x \$100) = \$1,791,800). However, Defendants argued that their exposure
2 was significantly less because they always complied with the law. As detailed in the motions the
3 Parties litigated prior to settlement, Defendants also argued that they were not joint employers,
4 were not subject to the PAGA because they were entitled to an exemption applicable to the
5 construction industry, and that Plaintiff and the aggrieved employees' claims were subject to
6 binding arbitration by operation of the various collective bargaining agreements governing their
7 employment.

8 13. While the PAGA does provide for a potentially heightened penalty of \$200 for
9 "subsequent" violations, many courts do not award that penalty unless there has been a prior
10 citation by the LWDA or court ruling demonstrating that the employer previously violated the
11 Labor Code. *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1209 (2008); *accord*
12 *Amalgamated Transit Union Local 1309 v. Laidlaw Transit Service, Inc.*, 2009 WL 2448430,
13 at *9 (S.D. Cal. Aug. 10, 2009) ("[u]nder California law, courts have held that employers are
14 not subject to heightened penalties for subsequent violations unless and until a court or
15 commissioner notifies the employer that it is in violation of the Labor Code"); *see also*
16 *Bernstein v. Virgin Am., Inc.*, 3 F.4th 1127, 1144 (9th Cir. 2021) (holding no subsequent
17 penalty unless prior citation or court ruling). Thus, Defendants argued that even if Plaintiff was
18 able to establish any violation of the Labor Code, the PAGA penalties assessed for these
19 violations will be computed at the \$100 rate, as opposed to the \$200 per pay period rate at
20 maximum, and there is a likelihood that a further reduction of the penalty would be appropriate
21 given Defendants' good faith efforts to comply with the Labor Code and their contentions that
22 they complied with the Labor Code at all times.

23 14. Defendants also argued that even if Plaintiff prevailed, the recoverable penalties
24 under PAGA are minimal. Indeed, courts often significantly reduce the penalties awarded. *See*
25 *Carrington v. Starbucks Corporation*, 30 Cal. App. 5th 504, 517 (2018) (approving PAGA
26 penalty reduction to \$5 per pay period); *accord Atempa v. Pedrazzani*, 27 Cal. App. 5th 809
27 (2018). If the Court in this case were to reduce penalties as was approved in *Carrington*, the
28 potential exposure would be significantly less.

1 15. Under the circumstances of this case, the payment of \$625,000.00 in civil
2 penalties is fair, adequate, and reasonable. The payment of \$625,000.00 in exchange for a release
3 of only those claims for civil penalties that are pleaded in the action or that could have been
4 pleaded based on the facts alleged in the operative Complaint will have a substantial deterrent
5 effect on Defendants and other California employers and will confer benefits on the Aggrieved
6 Employees, who will each receive a portion of the settlement, and the LWDA. This is
7 approximately 34% of the calculated maximum exposure (\$625,000 / \$1,800,000).

8 **SUMMARY OF THE MONETARY TERMS OF THE SETTLEMENT**

9 16. The Parties have agreed that Defendants will fund the Gross Settlement Amount
10 of \$625,000.00. Agreement ¶ 3.1. The Settlement Agreement allocates one-third of the Gross
11 Settlement Amount for attorneys' fees, or \$208,333.33, up to \$30,000.00 in litigation costs
12 incurred by Plaintiff's counsel ("PAGA Counsel"), \$10,000.00 to Plaintiff for a service award,
13 and up to \$5,250.00 for settlement administration costs. *Id.* ¶¶ 3.1, 3.2.1, 3.2.2, 3.2.4. The
14 remainder (or PAGA Penalties) is allocated to the payment of civil penalties under PAGA, 75%
15 of which is for distribution to the LWDA and 25% of which is for distribution to the Aggrieved
16 Employees on whose behalf Plaintiff filed this action, as required by PAGA. *Id.* ¶ 3.2.3.

17 17. Based on the potential exposure discussed above, the PAGA penalties total
18 approximately \$1.8 million. As such, PAGA Counsel estimates that the settlement value is
19 approximately 34% of the maximum exposure.

20 18. Each Aggrieved Employee will receive an individual payment proportionate to
21 the number of PAGA Pay Periods worked. *See id.* ¶¶ 1.18, 3.2.3.1. Each Individual Settlement
22 Payment will be considered the payment of a civil penalty and treated as IRS Form 1099 income.
23 *See id.* ¶ 3.2.3.2.

24 19. Any checks not cashed by Aggrieved Employees will be voided and the
25 unclaimed amount will be forwarded to the State of California Controller's Office Unclaimed
26 Property Fund in the name of the respective Aggrieved Employees. *See Settlement Agreement* ¶
27 4.4.3.

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1 20. In exchange for the monetary benefits of the settlement, the Aggrieved Employees
2 will provide the following release:

3 All Aggrieved Employees are deemed to release, on behalf of
4 themselves and their respective former and present representatives,
5 agents, attorneys, heirs, administrators, successors, and assigns, the
6 Released Parties from all claims, causes of action, demands,
7 damages, or liabilities arising at any time during the PAGA Period
8 that were pled or which could have been pled based on the factual
9 allegations contained in the operative Complaint or any amendments
thereto, including but not limited to claims brought under the Private
Attorneys General Act ("PAGA") for violation of Labor Code
Sections 212 and 225.5.

10 *Id.* ¶ 5.2. These claims are known as the Released PAGA Claims. *Id.* ¶ 1.25.

11 21. Plaintiff also executed a general release as part of the Settlement Agreement,
12 including a waiver of Civil Code § 1542. *Id.* ¶¶ 5.1, 5.1.1.

13 22. The Parties recognize the risk, expense, and delay in continuing litigation with the
14 PAGA claims, and believe the settlement to be fair, reasonable, and adequate.

15 23. Each side has apprised the other of their respective factual contentions, legal
16 theories, and defenses, resulting in negotiations taking place between the Parties.

17 24. From the inception of the case, PAGA Counsel have zealously represented the
18 interests of the Aggrieved Employees. PAGA Counsel have engaged in formal and informal
19 discovery, significant meet and confer discussions with opposing counsel to obtain informal data
20 and documents and to discuss the merits of the claims on behalf of the Aggrieved Employees,
21 and significant motion practice. The settlement was obtained for the benefit of the Aggrieved
22 Employees, as opposed to the individual Plaintiff.

23 25. Further, PAGA Counsel have significant experience in the area of employment
24 and wage and hour class and representative actions. PAGA Counsel's practice focuses on
25 representing employees in employment matters, particularly wage and hour cases on a
26 contingency basis.

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27. I practiced civil litigation at Haight Brown & Bonesteel LLP from approximately September 2013, through January 2016. I was third-chair in a federal court jury trial that resulted in a defense verdict in our client's favor on a \$21 million commercial breach of contract dispute. I also regularly litigated cases across the civil litigation spectrum, including employment matters.

29. From September 2017, through September 2018, I served as a law clerk to a Judge sitting on the United States District Court, Central District of California. I regularly prepared bench memoranda, on cases involving all types of civil litigation, including regularly working on wage and hour class actions.

30. I am currently an attorney at the law firm Diversity Law Group, P.C., an employment law firm that has handled numerous wage and hour class and individual actions, on both plaintiff and defense sides. My current practice focuses on employment matters involving both class actions, and single plaintiffs. The firm currently has cases in the Los Angeles Superior

Courts, the Orange County Superior Courts, the San Diego County Superior Courts, and the United States District Courts for the Central, Northern, and Eastern Districts of California. I am currently handling, or have handled, numerous wage and hour class action lawsuits with the firm, including, but not limited to: *Agar v. Sensient Natural Ingredients, LLC* (Case No. CV-19-001906, Stanislaus County Superior Court); *Heredia v. Eddie Bauer LLC* (Case No. 16CV300475, United States District Court, Northern District of California); *Parsons v. Estenson Logistics, LLC* (Case No. 34-2019-00252929, Sacramento County Superior Court); *Wood v. Reeve Trucking Co., Inc.* (Case No. STK-CV-UOE-2018-0004414, San Joaquin County Superior Court); *Coronel v. Pinnacle Agriculture* (Case No. 18CV004287, Monterey County Superior Court), and *Tice v. Trader Joe's Company* (Case No. 20CV00892, Santa Barbara County Superior Court), among others.

31. I have been certified as class counsel in a number of cases, including *Smith v. Gold Country Health Center, Inc.* (Case No. PC20180491, El Dorado County Superior Court) and *Pantoja v. RAMCO Enterprises, L.P.* (Case No. M126835, Monterey County Superior Court). I have also assisted in numerous wage and hour class action mediations.

32. On June 14, 2019, I argued two related cases in front of the Ninth Circuit Court of Appeals. One of them was *Rodriguez v Nike Retail Service Inc.*, Case No. 17-16866. On June 28, 2019, the Ninth Circuit issued a published decision, reversing and remanding in favor of our clients. *Rodriguez v. Nike Retail Servs., Inc.*, 928 F.3d 810 (9th Cir. 2019). The related case decision was *Chavez v. Converse, Inc.*, 772 Fed. Appx. 571 (June 28, 2019).

33. To date, I have incurred approximately 192.2 hours in connection with the litigation of this lawsuit. I also anticipate spending approximately 5 hours after approval responding to correspondence and phone calls from Aggrieved Employees, the settlement administrator, and Defense Counsel. Attached hereto as **Exhibit B** is a summary of the hours I have incurred to date.

34. The total lodestar for my hours will be approximately \$115,320.00 based on an hourly rate of \$600.00 per hour [(192.2 hours + 5 anticipated hours) x \$600]. I have been approved at \$600.00 per hour in *Weybrew v. BEI Construction*, Solano County Superior Court

Case No. FCS055658 (January 14, 2022), *In re See's Candies Wage and Hour Cases*, Case No. JCCP5004 (March 30, 2022), *Pevey v. Lumber City Corp*, San Bernardino County Superior Court Case No. CIVDS2010240 (May 2, 2022), *Anguiano v. Mann Packing Co., Inc.*, Monterey County Superior Court Case No. 19CV001178, and *Schneider v. Amazon Retail LLC*, Los Angeles County Superior Court Case No. 21STCV26226 (December 1, 2022), among others. Prior to that throughout 2020 and 2021, I was approved at an hourly rate of at \$550.00 per hour in *James v RADC Enterprises, Inc.*, San Bernardino County Superior Court, Case No. CIV-DS1933035 (September 29, 2020), *Hector Luna v. Triple Canopy, Inc.*, Santa Clara County Superior Court, Case No. 19CV345169 (October 22, 2020), *Melbert Magpugay v. Harbor Electronics, Inc.*, Santa Clara County Superior Court Case No. 19CV352547 (January 27, 2021), *Foster v. Schindler Elevator Corp.*, Alameda County Superior Court Case no. RG19029640 (March 2, 2021), *Martin v. Streetplus Company, LLC, et al*, Los Angeles Superior Court Case No. 19STCV15522 (July 13, 2021), *Morris v. Blue Mountain Enterprises, LLC*, Solano County Superior Court, Case No. FCS05.858 (August 4, 2021).

35. Based on the hours and applicable rates of myself and Larry Lee, the lodestar amount through the finalization of this settlement – without a multiplier – will be approximately \$177,960.00, which results in a modest multiplier of 1.17.

NOTICE TO THE LWDA AND AGGRIEVED EMPLOYEES

36. On August 1, 2023, my office uploaded the instant motion, Settlement Agreement, and proposed order to the LWDA's website. Attached hereto as **Exhibit C** is a true and correct copy of the LWDA confirmation.

37. Attached hereto as **Exhibit D** is a true and correct copy of proposed notice to accompany the settlement checks to Aggrieved Employees. The Settlement Administrator will distribute this notice to the Aggrieved Employees with their settlement checks. I obtained the attached bid from Phoenix Settlement Administrators to distribute the settlement, which I believe is reasonable given the scope of the settlement and my experience in handling PAGA settlements. The bid is attached as **Exhibit E**.

I declare under penalty of perjury under the laws of the State of California that the

1 foregoing is true and correct.

2 Executed on this 1st day of August 2023, at Los Angeles, California.

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4 _____
5 Max W. Gavron

EXHIBIT A

PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement (“Agreement”) is made by and between Plaintiff Benjamin Brown-Baxter (“Plaintiff”), on behalf of the PAGA claimants, on the one hand, and Defendants Desert Mechanical, Inc. and Tutor Perini Corporation (“Defendants”), on the other hand. The Agreement refers to Plaintiff and Defendants collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1 “Action” means the Plaintiff’s Private Attorney General Act (“PAGA”) lawsuit alleging violations of Labor Code Sections 212 and 225.5 against Defendants captioned *Brown-Baxter v. Tutor Perini Corporation, et al.*, initiated on August 13, 2021, LASC Case No. 21STCV30039, and pending in Superior Court of the State of California, County of Los Angeles.
- 1.2 “Administrator” means Phoenix Settlement Administrators, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3 “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with approval of this Settlement.
- 1.4 “Aggrieved Employee” means all eligible individuals employed by Defendants in the State of California who received at least one paper check during the PAGA Period.
- 1.5 “Aggrieved Employee Data” means Aggrieved Employee identifying information in TPC’s possession including the Aggrieved Employee’s name, last-known mailing address, Social Security number, and number of PAGA Pay Periods.
- 1.6 “Aggrieved Employee Address Search” means the Administrator’s investigation and search for current Aggrieved Employee mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Aggrieved Employees.
- 1.7 “Court” means the Superior Court of California, County of Los Angeles.
- 1.8 “Defense Counsel” means Robert Nida and Matthew Luce of Nida & Romy, P.C.
- 1.9 “Effective Date” means the date by when both of the following have occurred: (a) the Court enters its Order Approving the PAGA Settlement; and (b) PAGA Counsel has provided Defense Counsel with a fully executed request for dismissal of the Action with prejudice, to be held in trust by Defendant’s counsel for 90 days after Defendants have funded the Gross Settlement Amount to the Administrator.

- 1.10 “Gross Settlement Amount” means SIX HUNDRED AND TWENTY-FIVE THOUSAND DOLLARS AND ZERO CENTS (\$625,000.00) (“Settlement Payment”), which is the total amount Defendants agree to pay under the Settlement. Under no circumstance shall Defendants be compelled to pay any amount above the Settlement Payment. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, Service Payment, and the Administrator’s Expenses Payment.
- 1.11 “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period.
- 1.12 “Dismissal” means the dismissal, with prejudice, entered by the Court based upon the Approval Order.
- 1.13 “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subdivision (i).
- 1.14 “LWDA PAGA Payment” means 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subdivision (i).
- 1.15 “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Service Payment to Plaintiff, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Aggrieved Employees as Individual PAGA Payments.
- 1.16 “PAGA Counsel” means Larry W. Lee and Max W. Gavron of Diversity Law Group, P.C., the attorneys representing the Plaintiff in the Action.
- 1.17 “PAGA Counsel Fees Payment” and “PAGA Counsel Litigation Expenses Payment” mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.18 “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for TPC for at least one day during the PAGA Period and received a paper paycheck.
- 1.19 “PAGA Period” means the period from June 10, 2020 to August 3, 2021.
- 1.20 “PAGA” means the Private Attorneys General Act (Lab. Code, § 2698, *et seq.*).
- 1.21 “PAGA Notice” means Plaintiff’s letter to TPC and the LWDA, dated June 9, 2021, providing notice pursuant to Labor Code section 2699.3, subdivision (a).

- 1.22 “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$92,854.17) and the 75% to LWDA (\$278,562.50) in settlement of PAGA claims.
- 1.23 “Plaintiff” means Benjamin Brown-Baxter, the named plaintiff in the Action.
- 1.24 “Approval Order” means the Court Order Granting Approval of PAGA Settlement.
- 1.25 “Released PAGA Claims” means the claims being released by the Plaintiff, the Aggrieved Employees, and PAGA Counsel and as described in Paragraph 5 below.
- 1.26 “Released Parties” means Defendants and each of their former and present directors, officers, managers, shareholders, affiliates, agents, owners, subsidiaries, parent companies, business units, joint venture partners, attorneys, insurers, predecessors, successors, and assigns.
- 1.27 “Service Payment” means the amount of \$10,000.00, which Plaintiff will be paid from the Gross Settlement Amount in recognition of Plaintiff’s efforts and risks in assisting with the prosecution of the Action and as consideration for executing this Agreement and providing a general release and as described in Paragraph 5 below.
- 1.28 “Settlement” means the disposition of the Action effected by this Agreement and the Dismissal.
- 1.29 “Defendants” means named Defendants Tutor Perini Corporation and Desert Mechanical, Inc.

2. RECITALS.

- 2.1 On August 13, 2021, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendants for violation of the PAGA. On October 18, 2021, Plaintiff filed a First Amended Complaint adding allegations that Defendants jointly employed Plaintiff and stating that Plaintiff had exhausted his administrative remedies. On December 6, 2021, Plaintiff filed a Second Amended Complaint adding additional allegations regarding the corporate relationship between Defendants. The Second Amended Complaint is the operative complaint in the Action (the “Operative Complaint”). Defendants deny the allegations in the all of the complaints and amendments thereto filed by Plaintiff, and deny any failure to comply with the laws identified in the Action in the broadest possible terms, and deny any and all liability for the causes of action alleged in the Action.
- 2.2 Pursuant to Labor Code section 2699.3, subdivision (a), Plaintiff claims to have provided timely written notice to Defendants and the LWDA by sending the PAGA Notice.
- 2.3 On April 10, 2023, the Parties participated in an all-day mediation presided over by neutral Christopher E. Panetta, Esq., which led to this Agreement to settle the Action.

- 2.4 Prior to mediation, Plaintiff obtained, through both formal and informal discovery, records including but not limited to Plaintiff's payroll and personnel records, copies of pay stubs, and relevant collective bargaining agreements, as well as data regarding the number of allegedly aggrieved employees and pay checks issued during the relevant period. This information allowed Plaintiff to assess the scope of Defendants' liability.
- 2.5 The Parties, PAGA Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

- 3.1 Gross Settlement Amount. Defendants promise to pay the Gross Settlement Amount as defined above in the amount of \$625,000, . Under no circumstance shall Defendants be required to pay any amount more than the stated Gross Settlement Amount. Defendants have no obligation to pay the Gross Settlement Amount prior to Approval Order and receipt of the Request for Dismissal from PAGA Counsel. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendants.
- 3.2 Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:
- 3.2.1 To PAGA Counsel: A PAGA Counsel Fees Payment of not more than one-third of the Gross Settlement Amount, which is currently estimated to be \$208,333.33, and PAGA Counsel Litigation Expenses Payment of not more than \$30,000.00. Defendants will not oppose requests for Court approval of these payments provided that they do not exceed these amounts and do not require the Gross Settlement Amount to be increased in any way. Plaintiff and/or PAGA Counsel will file an application or motion for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's Counsel arising from any claim to any portion of any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds Released Parties harmless, and indemnifies Released Parties, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.2 To the Administrator: An Administrator Expenses Payment not to exceed \$5,250.00, except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$5,250.00, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator Expense Payment shall be deducted from the Gross Settlement Payment, and the Gross Settlement Amount shall not be increased due to any amounts owed to the Administrator.

3.2.3 To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$371,416.67 to be paid from the Gross Settlement Amount, with 75% (\$278,562.50) allocated to the LWDA PAGA Payment and 25% (\$92,854.17) allocated to the Individual PAGA Payments.

3.2.3.1 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$92,854.17) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.3.2 If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

3.2.4 To the Plaintiff: A Service Payment of \$10,000.00 as recognition of Plaintiff's efforts and risks in assisting with the prosecution of the Action and as consideration for executing this Agreement and providing a general release of claims and waiver of the protections of Civil Code § 1542.

3.2.4.1 If the Court approves a Service Payment of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Service Payment on an IRS 1099 Form.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1 Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendants estimate there are 428 Aggrieved Employees who worked a total of 9,175 PAGA Pay Periods.

4.2 Aggrieved Employee Data. Within 15 days, Defendants will simultaneously deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employees' privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose and restrict access to the

Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. Defendants have a continuing duty to immediately notify PAGA Counsel if Defendants discover that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any extension of the deadline by which Defendants must send the Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data.

4.3 Funding of Gross Settlement Amount. Defendants shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than 14 business days after the Effective Date, and upon receipt of a 2023 signed IRS W-9 form from the Administrator.

4.4 Payments from the Gross Settlement Amount. Within 14 days after Defendants fund the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, Service Payment, the LWDA PAGA Payment, the Administration Expenses Payment, and the PAGA Counsel Expenses Payment. Disbursement of the PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments.

4.4.1 The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.4.2 The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check, the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date.

4.4.3 For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.

4.4.4 The payment of Individual PAGA Payments shall not obligate Defendants to confer

any additional benefits or make any additional payments to the Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. RELEASES OF CLAIMS. Effective on the date when Defendants fully fund the entire Gross Settlement Amount, Plaintiff and PAGA Counsel will release claims against all Released Parties as follows:

5.1 Plaintiff's Release. Plaintiff and his respective former and present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions or occurrences that occurred during the PAGA Period, including, but not limited to: all claims that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint and the PAGA Notice ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time or based on occurrences outside the PAGA Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

5.1.1 Plaintiff's Waiver of Rights Under Civil Code Section 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

5.2 Release by Aggrieved Employees:

All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims, causes of action, demands, damages, or liabilities arising at any time during the PAGA Period that were pled or which could have been pled based on the factual allegations contained in the operative Complaint or any amendments thereto, including but not limited to claims brought under the Private Attorneys General Act ("PAGA") for violation of Labor Code Sections 212 and 225.5.

5.3 Release by PAGA Counsel:

PAGA Counsel release on behalf of their present and former attorneys, employees, agents, successors, and assigns the Released Parties from all claims for PAGA Fees incurred in connection with the Operative Complaint and the PAGA Period facts stated in the Operative Complaint and the PAGA Notice.

6. MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT. The Parties agree to jointly file an application or motion for approval of this Settlement, which Plaintiff and his counsel preparing the motion for approval by Defendants.

- 6.1 Plaintiff's Responsibilities. Plaintiff, through PAGA Counsel, will prepare and deliver to Defense Counsel all documents necessary for obtaining approval of this Settlement under Labor Code section 2699, subdivision (f)(2)) including (i) a draft proposed Order Granting Approval of PAGA Settlement; (ii) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Aggrieved Employee Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any financial relationship with Plaintiff, PAGA Counsel, or Defense Counsel; (iii) a signed declaration from PAGA Counsel firm attesting to its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Lab. Code, §2699, subd. (1)(1)), this Agreement (Lab. Code, § 2699, subd. (1)(2)); (iv) a redlined version of the parties' Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (v) all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Administrator. In their Declarations, Plaintiff and PAGA Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.
- 6.2 Responsibilities of PAGA Counsel and Defense Counsel. PAGA Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the application or motion for approval of this Settlement no later than 30 days after the full execution of this Agreement and, if necessary, obtaining a prompt hearing date for the motion and appearing in Court to advocate in favor of the motion. PAGA Counsel is responsible for delivering the Court's Approval Order to the Administrator. The deadline to move for approval set forth in this paragraph shall be extended to the deadline to file such a motion to the extent the Court's calendar cannot accommodate a hearing within 30 days of the signing of this agreement plus the notice period.
- 6.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed application or motion for approval of this Settlement and/or the supporting declarations and documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant the motion for approval of this Settlement or conditions its approval on any material change to this Agreement, PAGA Counsel and

Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

- 7.1 Selection of Administrator. The Parties have jointly selected Phoenix Settlement Administrators to serve as the Administrator and verified that, as a condition of appointment, Phoenix Settlement Administrators agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities. The Administrator shall provide its Employer Identification Number to Defendants for purposes of funding the Gross Settlement Amount, including providing an IRS form W-9.
- 7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.
- 7.4 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

8. AGGRIEVED EMPLOYEE SIZE ESTIMATES and ESCALATOR CLAUSE

Based on its records, Defendants estimate that, as of the date of this Settlement Agreement, there are 428 Aggrieved Employees who worked 9,175 Pay Periods during the PAGA Period. To the extent the total number of PAGA Pay Periods exceeds 9,175 by more than 5% (*i.e.*, greater than 9,634), the PAGA Period shall be reduced to a date that would render the number of PAGA Pay Periods during the PAGA Period no greater than 9,634.

9. CONTINUING JURISDICTION OF THE COURT. The Parties agree that the Court will retain jurisdiction over the Parties, Action, and the Settlement for 90 days after Defendants have funded the Gross Settlement Amount solely for the purpose of addressing settlement administration matters. The Parties will request the Court set an Order to Show Cause regarding dismissal for 150 from entry of the Approval Order.

- 9.1 Waiver of Right to Appeal. Provided the Approval Order is consistent with the terms and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment, the Parties, their respective counsel waive all rights to appeal, including all rights to appellate and writ proceedings. The waiver of appeal does not include any waiver of the right to oppose such writs or

appeals. If either party files an appeal or writ, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal or writ is finally resolved and the Dismissal becomes final.

10. ADDITIONAL PROVISIONS.

10.1 No Admission of Liability or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendants that any of the allegations in the Operative Complaint or Action have merit or that Defendants have any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendants' defenses in the Action have merit. Defendants expressly deny all allegations brought against them. The Parties agree that representative treatment is for purposes of this Settlement only. If for any reason the Court does not approve this Settlement, Defendants reserve all available defenses to the claims in the Action, and Plaintiff reserves the right to contest Defendants' defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

10.2 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.

10.3 Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

10.4 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

10.5 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action or right released and discharged by the Party in this Settlement.

- 10.6 No Tax Advice. Neither Plaintiff, PAGA Counsel, Defendants, nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 10.7 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 10.8 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 10.9 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 10.10 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 10.11 Confidentiality. To the extent permitted by law, all agreements made and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 10.12 Use and Return of Aggrieved Employee Data. Information provided to PAGA Counsel pursuant to Evidence Code section 1152, and all copies and summaries of the PAGA Data provided to PAGA Counsel by Defendants in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute or California Rules of Court rule. Not later than 90 days after the Administrator discharges its obligation to pay out of all Settlement funds, Plaintiff shall destroy all paper and electronic versions of Aggrieved Employee Data received from Defendants unless, prior to the Administrator's payment of all Settlement Funds, Defendants make a written request to PAGA Counsel for the return, rather than the destruction, of Aggrieved Employee Data.
- 10.13 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 10.14 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to business days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 10.15 Notice. All notices, demands, or other communications between the Parties in

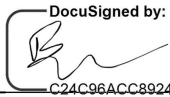
connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff: Larry W. Lee
Max W. Gavron
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
lwlee@diversitylaw.com
mgavron@diversitylaw.com

To Defendants: Robert Nida
Matthew Luce
NIDA & ROMYN, P.C.
12121 Wilshire Blvd., Suite 1100
Los Angeles, CA 90025
rnida@nidaromyn.com
mluce@nidaromyn.com

10.16 Execution in Counterparts. This Agreement may be executed in one or more counterparts by original signature or electronically (*i.e.*, DocuSign), and transmitted by email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

10.17 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to Code of Civil Procedure section 583.330 to extend the date to bring a case to trial under Code of Civil Procedure section 583.310 for the entire period of this settlement process.

DocuSigned by:

C24C96ACC8924E4...

Plaintiff Benjamin Brown-Baxter

For Defendants

5/22/2023

(date)

(date)

APPROVED AS TO FORM:



Max W. Gavron Counsel For Plaintiff

Matthew Luce Counsel For Defendants

May 22, 2023

(date)

(date)

connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

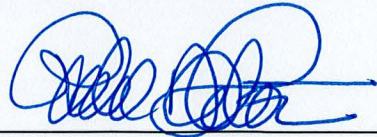
To Plaintiff: Larry W. Lee
Max W. Gavron
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
lwlee@diversitylaw.com
mgavron@diversitylaw.com

To Defendants: Robert Nida
Matthew Luce
NIDA & ROMYN, P.C.
12121 Wilshire Blvd., Suite 1100
Los Angeles, CA 90025
rnida@nidaromyn.com
mluce@nidaromyn.com

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Plaintiff Benjamin Brown-Baxter



Ronald Tutor
CEO of Tutor Perini Corporation
For Defendant Desert Mechanical, Inc. and
Defendant Tutor Perini Corporation
Signed May 18, 2023

(date)

APPROVED AS TO FORM:

Max W. Gavron Counsel For Plaintiff



Matthew Luce Counsel For Defendants

(date)

May 18, 2023

(date)

EXHIBIT B

Brown-Baxter v. Tutor Perini Corp., et al.
MG Time and Task Chart

Hours	Description of Work
13.4	Initial research and review of background facts in preparation for filing of claims; draft PAGA letter; confer with co-counsel re theories of liability and conduct research re same; analysis and research re defendants
5.9	Conduct legal research re joint employer and/or alter ego theories of liability given Defendants' entity status; research factual bases to support these theories of liability.
1.7	Analysis, research, and strategy re assignment to Judge and evaluation re initial court notices
11.2	Analyze, review, and research Defendant's Motion to Strike and Demurrer; confer with co-counsel re same.
15.1	Draft and opposition to motion to strike and demurrer and supporting documents, and conduct further research and analysis in support of same
7.2	Analyze and review Defendants' reply in support of motion to strike and demurrer; prepare for hearing re same; analyze and review court's tentative ruling re same; appear at hearing re same.
9.1	Analyze, review, and research Defendants' Motion to Compel Arbitration; confer with co-counsel and client re same.
12.4	Draft and revise opposition and supporting documents to Motion to Compel Arbitration.
6.5	Analyze and review reply in support of Motion to Compel Arbitration; prepare for and attend hearing re same; analyze and review Court's tentative ruling re same.
2.5	Prepare drafts of initial written discovery requests
25.3	Analyze and review Defendant's responses to written discovery; meet and confer with defense counsel re same; participate in informal discovery conference with Court re same considering Defendants' arguments re arbitration and CBA defense.
6.7	Analyze, review, and summarize Defendant's document production spanning over 1500 pages.
1.3	Meet and confer re Belaire-West notice; draft and revise the same; confer with third-party administrator to distribute same.
2.6	Further meet and confer with Defendants' counsel re additional discovery given court's denial of motion to compel arbitration; draft and revise correspondence re same.

Hours	Description of Work
15.0	Draft and revise four motions to compel further responses to written discovery including separate statements and declarations re same.
6.8	Draft and revise second and third sets of discovery to Defendants; analyze and review responses to second and third sets of discovery.
1.2	Confer with defense counsel re mediation and information required for the same; draft and revise stipulation to continue trial pending mediation
3.1	Analysis, strategy, and research re information required from defendant to participate in mediation; draft and revise data requests for defense counsel in advance of mediation; confer with co-counsel re the same
7.4	Conduct legal research re joint employer theory of liability in light of data provided by defendant in advance of mediation and prepare analysis of liability and damages exposure model re the same; confer with co-counsel re same
8.1	Draft and revise mediation brief; conduct legal research for same; review of case law; analyze and review data provided by Defendants to calculate damages exposure in advance of mediation; confer with co-counsel
11.2	Prepare for, and attend, mediation; confer with and co-counsel client re same.
8.4	Review and revise settlement agreement; conversations with opposing counsel re same; confer with co-counsel re terms of settlement agreement and make revisions considering same
10.1	Draft and revise motion for approval and supporting documents; confer with co-counsel re the same; conduct legal research re same.
192.2	TOTAL HOURS

EXHIBIT C

EXHIBIT D

[SETTLEMENT ADMINISTRATOR LETTERHEAD]

Notice of PAGA Settlement and Release Agreement

[Mailing Date]

[Address]

RE: Settlement Payment

Enclosed is your settlement payment from the settlement of the lawsuit entitled *Benjamin Brown-Baxter*, Case No. 21STCV30039, Superior Court of the State of California for the County of Los Angeles (“Action”). This Action was filed by Plaintiff Benjamin Brown-Baxter (“Plaintiff”) against Defendants Tutor Perini Corporation and Desert Mechanical, Inc. (collectively, “Defendant” or “Company”) pursuant to the California Labor Code Private Attorneys General Act of 2004, Cal. Lab. Code § 2698, *et seq.* (the “PAGA”).

The Action was brought on behalf of the State of California and all similarly situated “aggrieved employees” of the Defendant for civil penalties for the Company’s alleged violation of Labor Code §§ 212 and 225.5. Defendant denies any wrongdoing or that it owes any penalties. The Court has ***not*** made a determination about Plaintiff’s claims. The parties agreed to resolve the case, and as part of that settlement, Defendant agreed to pay a gross settlement amount of \$625,000.00, which shall be distributed as follows: (1) \$208,333.33 in attorneys’ fees and \$ [redacted] in costs; (2) \$10,000.00 for Plaintiff’s service award; (3) \$5,250.00 to the settlement administrator for its costs; and (4) 75% of the remaining PAGA penalty fund, or \$ [redacted], to the California Labor and Workforce Development Agency for its share of penalties. Under the PAGA, certain penalties get divided between the State and the employees. As a result of this settlement, the State’s and your ability to seek penalties recoverable under the PAGA for the claims described above have been settled.

The settlement group includes all current and former employees of Defendant, including Plaintiff, who are or have been employed by Defendant in the State of California who received at least one paper check between June 10, 2020, and August 3, 2021 (“Covered Period”). You are releasing Defendant, and each of their former and present directors, officers, managers, shareholders, affiliates, agents, owners, subsidiaries, parent companies, business units, joint venture partners, attorneys, insurers, predecessors, successors, and assigns from all claims, causes of action, demands, damages, or liabilities arising at any time during the Covered Period that were pled or which could have been pled based on the factual allegations contained in the operative Complaint or any amendments thereto, including but not limited to claims brought under the Private Attorneys General Act (“PAGA”) for violation of Labor Code Sections 212 and 225.5 (“Released Claims”).

You have been identified as having worked ☒ eligible pay periods during the Covered Period. Enclosed is a check made out to you in the amount of \$(amount). The check represents your share of the settlement for PAGA civil penalties. The check will expire 180 calendar days from the date it was issued. After the 180-day period, the administrator will send any unclaimed funds to the State of California Unclaimed Property Fund. If you were unable to cash your check for any reason during the 180-day check cashing period, you can contact the State of California Controller’s Office to see if you can obtain your funds. Even if you fail to cash the enclosed check, you will still be deemed to have waived the Released Claims.

If you have any questions, you can contact the settlement administrator at [add contact information], or the Plaintiff’s attorneys at: Larry W. Lee/Max W. Gavron, Diversity Law Group, P.C., 515 S. Figueroa, Suite 1250, Los Angeles, CA 90071, Telephone: 213-488-6555.

Sincerely,

[Administrator]

EXHIBIT E



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

CASE ASSUMPTIONS

Class Members	440
Opt Out Rate	N/A
Opt Outs Received	
Total Class Claimants	440
Subtotal Admin Only	\$5,250.00

Not-to-Exceed Total \$5,250.00

For 440 Class Members

Pricing Good for Scope of Estimate Only

May 4, 2023

Case: Brown-Baxter v Tutor Perini PAGA Administration

Phoenix Contact: Jodey Lawrence

Contact Number: 949.566.1455

Email: Jodey@phoenixclassaction.com

Requesting Attorney: Max W. Gavron

Firm: Diversity Law Group, APC

Contact Number: (213) 488-6555

Email: mgavron@diversitylaw.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PSA will need to adjust this Estimate accordingly.

Estimate is based on 440 Class Members. PSA assumes class data will be sent in Microsoft Excel or other usable format with no or reasonable additional formatting needed. A rate of \$150 per hour will be charged for any additional analysis or programming.

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item Estimate
Programming Manager	\$100.00	2	\$200.00
Programming Database & Setup	\$100.00	2	\$200.00
Toll Free Setup*	\$78.26	1	\$78.26
Call Center & Long Distance	\$2.00	44	\$88.00
Static Website	\$200.00	1	\$200.00
		Total	\$766.26

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Check & Postage

Project Action	Rate	Hours/Units	Line Item Estimate
Notice Packet Formatting	\$100.00	2	\$200.00
Data Merge & Duplication Scrub	\$0.25	440	\$110.00
Notice and Check Packet	\$1.75	440	\$770.00
Estimated Postage (up to 1 oz.)*	\$0.64	440	\$281.60
		Total	\$1,361.60

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables

Project Action:	Rate	Hours/Units	Line Item Estimate
Case Associate	\$50.00	2	\$100.00
Skip Tracing Undeliverables	\$1.50	66	\$99.00
Remail Notice Packets	\$1.75	66	\$115.50
Estimated Postage	\$0.64	66	\$42.24
Programming Undeliverables	\$50.00	2	\$100.00
Total			\$456.74

Database Programming

Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Claims Database	\$135.00	2	\$270.00
Case Manager	\$125.00	1	\$125.00
Total			\$395.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks

Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Calculations	\$125.00	2	\$250.00
Disbursement Review	\$125.00	2	\$250.00
Programming Manager	\$125.00	2	\$250.00
QSF Bank Account & EIN	\$50.00	1	\$50.00
Check Run Setup & Printing	\$125.00	2	\$250.00
Total			\$1,050.00

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations			
Project Action:	Rate	Hours/Units	Line Item Estimate
Case Supervisor	\$100.00	2	\$200.00
Remail Undeliverable Checks (Postage Included)	\$1.50	84	\$125.40
Case Associate	\$50.00	2	\$100.00
Reconcile Uncashed Checks	\$85.00	2	\$170.00
Conclusion Reports	\$75.00	1	\$75.00
Case Manager Conclusion	\$75.00	1	\$75.00
Final Reporting & Declarations	\$125.00	1	\$125.00
QSF Annual Tax Reporting * (State Tax Reporting Included)	\$350.00	1	\$350.00
Total			\$1,220.40

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$5,250.00



TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.